

# Order

## Michigan Supreme Court Lansing, Michigan

Entered: October 23, 2001

Maura D. Corrigan,  
Chief Justice

01-08  
01-13

Michael F. Cavanagh  
Elizabeth A. Weaver  
Marilyn Kelly  
Clifford W. Taylor  
Robert P. Young, Jr.  
Stephen J. Markman,  
Justices

Amendment of Rule  
7.213 of the Michigan  
Court Rules

---

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendment of Rule 7.213 of the Michigan Court Rules is adopted, to be effective January 1, 2002.

[The present language is amended as indicated below.]

### **Rule 7.213 Calendar Cases**

(A) Pre-Argument Conference in Calendar Cases.

- (1) At any time before submission of a case, the Court of Appeals may direct the attorneys for the parties and client representatives with settlement authority to appear in person or by telephone for a pre-argument conference. The conference will be conducted by the court, or by a judge, retired judge or attorney designated by the court, known as a mediator ~~moderator~~. The conference shall consider the possibility of settlement, the simplification of the issues, and any other matters which the mediator ~~moderator~~ determines may aid in the handling of or the disposition of the appeal. The mediator ~~moderator~~ shall make an order that recites the action taken at the conference and the agreements made by the parties as to any of the matters considered, and that limits the issues to those not disposed of by the admissions or agreements of counsel. Such order, when entered, controls the subsequent proceedings, unless modified to prevent manifest injustice.
- (2) All civil cases will be examined to determine if a pre-argument conference would be of assistance to the court or the parties. An attorney or a party may request a pre-argument conference in any case. Such a request

shall be confidential. The pre-argument conference shall be conducted by

- (a) the court, or by a judge, retired judge or attorney designated by the court;
- (b) if the parties unanimously agree, a special mediator ~~moderator~~ designated by the court or selected by unanimous agreement of the parties. The special mediator ~~moderator~~ shall be an attorney, licensed in Michigan, who possesses either mediation-type experience or expertise in the subject matter of the case. The special mediator ~~moderator~~ may charge a reasonable fee, which shall be divided and borne equally by the parties unless agreed otherwise and paid by the parties directly to the mediator ~~moderator~~. If a party does not agree upon the fee requested by the mediator ~~moderator~~, upon motion of the party, the Court of Appeals shall set a reasonable fee.

When a case has been selected for participation in a pre-argument conference, participation in the conference is mandatory; however, the Court of Appeals may except the case from participation on motion for good cause shown if it finds that a pre-argument conference in that case would be inappropriate.

(3) [Unchanged.]

(4) Statements and comments made during the pre-argument conference are confidential, except to the extent disclosed by the pre-argument conference order, and shall not be disclosed by the mediator ~~moderator~~ or by the participants in briefs or in argument.

(5) - (6) [Unchanged.]

(B) [Unchanged.]

(C) Priority on Calendar. The priority of cases on the session calendar is in accordance with the initial filing dates of the cases ~~clerk's notice to the parties~~, except that precedence shall be given to interlocutory criminal appeals, and child custody cases, and cases that the court orders expedited.

(D) - (E) [Unchanged.]

Staff Comment: The amendments of MCR 7.213(A) and (C), effective January 1, 2002, were requested by the Court of Appeals. The term "mediator" was substituted for the term "moderator" in

subrule (A), to be consistent with other recent rule changes governing case facilitation and mediation. In addition, subrule (A) was amended to allow the court to require the attendance of client representatives with settlement authority at pre-argument settlement conferences. (File No. 01-13.) The amendment of subrule (C) required that cases be placed on the session calendar in the order in which they are filed. (File No. 01-08.)

The staff comment is published only for the benefit of the bench and bar and is not an authoritative construction by the Court.